IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
EASTERN WATERLOO DIVISION

TERRY DENNER, Plaintiff, vs. DEERE & COMPANY, Defendant.	No. C 03-2057 LRR **ORDER** *NOT FOR PUBLICATION*

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I. INTRODUCTION AND PROCEDURAL BACKGROUND

On September 15, 2003, Plaintiff Terry Denner ("Denner") filed a Petition at Law in the Iowa District Court for Black Hawk County. Deere removed the matter to this court on October 2, 2003 on the basis that this court has diversity subject matter jurisdiction. Deere invokes this court's jurisdiction inasmuch as complete diversity of citizenship exists between the parties and the amount in controversy exceeds $75,000.00. 28 U.S.C. § 1332. Denner is an Iowa resident. Deere is a Delaware corporation with its principal

place of business in Illinois.

Denner's Petition at Law is based on a theory of promissory estoppel. Denner alleges his employment was terminated by Deere because of a prior criminal matter of which Denner had informed Deere prior to beginning work and about which Denner had received a clear and definite promise that the circumstances of the matter would not prevent Denner's employment. Denner contends he reasonably relied upon such promise in accepting Deere's job offer. After his termination, Denner argues, he was unable to return to his previous job because the position he had vacated to work for Deere had already been filled. Denner maintains that as a result of his reliance on Deere's promises to Denner's detriment, Denner suffered substantial economic damages. Denner seeks past and future lost wages, costs incurred in relying on Deere's promises, costs of bringing the action, and reasonable attorneys' fees.

On September 20, 2004, Deere filed the instant Motion for Summary Judgment (docket no. 12). On October 27, 2004, Denner resisted such motion. On November 5, 2004, Deere filed a reply to Denner's resistance. The court held a hearing on such motion January 6, 2005. Denner was represented by attorney John O. Haroldson. Deere was represented by attorney Patrick B. White. Finding the motion to be fully submitted and ready for decision, the court turns to consider it.

II. UNDISPUTED FACTS

A. Material Facts Not In Dispute

In January 2001, Denner began considering employment with Deere after reading a newspaper employment advertisement. Denner submitted a formal application for employment on January 24, 2001. In March or April of 2001, Denner was introduced to Craig Wickham, a human resources representative for Deere. Mr. Wickham discussed generally with Denner the prospect of employment at Deere and informed Denner that

Deere would be instituting a hiring freeze. Included in Deere's hiring process is a routine investigation of the prospective employee's criminal background. Deere, with the permission of the prospective employee, requests information from the Iowa Department of Criminal Investigation ("DCI"). Pursuant to Deere's normal operating procedure, Mr. Wickham submitted a request to the DCI seeking information related to Denner. On June 21, 2001, the DCI faxed to Mr. Wickham a report indicating that Denner had been charged with second-degree theft in December 1998. The report further indicated the charge was disposed of by granting Denner a deferred judgment on third-degree theft. The disposition of the matter was labeled as "unknown." After receiving the DCI report, Mr. Wickham informed Denner that his background check had revealed an "open court case." Denner informed Mr. Wickham that "the charge was to be expunged and it was supposed to be off of his record." Denner further assured Mr. Wickham that the matter was "closed" and that Denner could provide documentation stating that the case was "finished." Mr. Wickham informed Denner that, if he could show that the matter had been expunged, he would be placed back into the hiring process in the order in which he was interviewed. Denner provided to Mr. Wickham a "Probation Discharge" issued in the criminal court of Black Hawk County stating that Denner had been granted a "Deferred Judgment" in the case and that the record of the case had been "expunged." Subsequent to receiving the document indicating that the case had been expunged, Mr. Wickham placed Denner back into the hiring process in the order in which he was interviewed. Mr. Wickham informed Denner that he was back in the hiring process, but that Deere was experiencing the hiring freeze about which he had previously told Denner. At that time, there were still many contingencies that needed to be dealt with before Denner could or would be hired: Denner was still required to pass tests to determine his employability and it was not even known whether a job for which Denner was qualified would become available. Denner and Mr.

Wickham never again specifically discussed the criminal matter and Denner provided no further information or documentation with respect to the criminal matter. For the next several months, Denner frequently contacted Mr. Wickham to check on the status of the hiring process and inquire as to the hiring freeze and when a position might become available.

In April 2002, a position for which Denner was waiting became available. Mr. Wickham contacted Denner to inform him that Deere intended to hire more employees and that Denner should complete the remaining necessary tests. Certain evaluations, such as physical exams, are not given to potential employees until a specific position has become available for which the employee might be appropriate. Denner and Mr. Wickham had another conversation in early May 2002 during which Mr. Wickham informed Denner that he needed to make a decision as to whether he wanted to accept the position that had become available. Denner alleges, at the meeting, he stated to Mr. Wickham he would accept the position "if you don't have a problem hiring me." Denner also alleges he stated, "if everything was in the clear [and] there was no problems between us, that I would take the job." Denner alleges Mr. Wickham responded that Denner had "passed all my tests, everything was clear." Denner was hired and began working for Deere on May 20, 2002.

After Denner began work, John Roloff, Supervisor, Wage Employment for Deere, reviewed Denner's application for employment and noted Denner had previously been employed by Boos Implement in New Hampton, Iowa. In the "Reason for Leaving" portion of the application, Denner wrote "Better paying job." Denner also stated on his application that he did not wish to use Boos Implement as a reference. Roloff also learned the second-degree theft charge filed against Denner involved a Deere tractor engine. On May 30, 2002, Mr. Roloff terminated Denner's employment.

Denner claims Deere "made a clear and definite promise that the circumstances of the matter would not prevent his employment." Denner claims he relied to his detriment on this "promise."

Denner's alleged damages are as follows:

a. lost wages during five months of unemployment following his termination from Deere (apparently using Deere wages as the basis for calculation);

b. lost future wages, calculated using a projection of what Denner would have earned had he been employed at Deere for thirty years; and

c. lost future benefits calculated using a projection of benefits Denner would have had or obtained had he been employed at Deere for the next thirty years.

Denner bases his damages assumptions on two alleged statements made by Mr. Wickham:

a. "If you show up on time, do your job, you'll have a job here for life."

b. "A lot of guys will work her[e] 30 years. Out at Product engineering, you'll be able to work 30 years easily."

Denner testified at deposition with respect to future Deere wages, "I need to assume increases. I'm sure over thirty years there will be increases." Denner testified at deposition that, with respect to future Deere wages, "[w]e would have to have somebody project that out for us." Denner recognizes that he has "no idea" what the wages at his current occupation will be in the future.

B. Material Facts In Dispute

Deere contends that at the meeting between Mr. Wickham and Denner in early- to mid-2001 regarding Denner's prior criminal matter, Mr. Wickham informed Denner that because of the results of the background check, Deere "probably wouldn't be hiring him." Deere avers on May 24, 2002, Mr. Roloff was contacted by Dean Swinton, the manager

of the department in which Denner was employed. Deere asserts Mr. Swinton informed Mr. Roloff that he had been contacted by multiple individuals expressing concern at the fact that Deere had hired Denner. Deere further contends Mr. Swinton informed Mr. Roloff that Denner "may have been fired at a previous employer" for an incident involving "theft." According to Deere, Mr. Swinton indicated he did not know whether any charges had been filed. Deere maintains Mr. Swinton indicated that the previous employer was Boos Implement. Deere asserts that in response to Mr. Swinton's concerns, Mr. Roloff investigated Denner's file, and, specifically, reviewed Denner's application for employment. Deere states that to follow up on Mr. Swinton's concerns, Mr. Roloff contacted Boos Implement and spoke to Lloyd Phillips, Assistant General Manager. Deere contends Mr. Phillips informed Mr. Roloff that Denner had been charged with stealing an engine from Hawkeye Community College and other equipment from Boos. Deere maintains Mr. Phillips stated Boos had put Denner on unpaid suspension because of the charges. According to Deere, Mr. Phillips also informed Mr. Roloff he recalled that Deere's Waterloo Plant security department had investigated the matter. Deere avers Mr. Phillips informed Mr. Roloff that he recalled Jerry Neuendorf of Deere's security department was involved in the investigation. Deere contends after speaking with Mr. Phillips, Mr. Roloff contacted Mr. Neuendorf. Deere asserts Mr. Neuendorf explained to Mr. Roloff that Deere's security department had a file on Denner. Deere contends that according to Deere's security file, Denner had, on multiple occasions, attempted to steal from Deere various pieces of equipment. Deere urges Mr. Neuendorf explained that Denner had developed a scheme in which he would falsely inform Deere that he was a Deere instructor and that he needed the pieces of equipment in order to instruct a class. Deere states that according to Mr. Neuendorf, Denner had, on multiple occasions, attempted to steal equipment from Deere by lying to Deere representatives. Deere claims

Mr. Neuendorf explained that Denner had unsuccessfully attempted the scheme on multiple occasions, and had at least once been successful in stealing from Deere a piece of equipment. Deere contends the stolen equipment - a Deere tractor engine - was one of the items underlying the second-degree theft charge filed against Denner in December 1998. According to Deere, after receiving the information from Mr. Neuendorf, Mr. Roloff determined Deere could no longer employ Denner. Deere avers Mr. Roloff's decision to terminate Denner was based solely on the information found in Deere's internal security records - the records maintained by Mr. Neuendorf and recited by Mr. Neuendorf to Mr. Roloff. Deere states the decision was not based on information received through Denner's criminal background check and was not based on the existence of the criminal matter. Deere states the DCI report gives no information as to the specifics of the second-degree theft case filed against Denner. Deere further avers one would have no idea from reading the DCI report that one of the pieces of equipment at the heart of the theft charges was a piece of Deere machinery. In fact, Deere maintains, there is no way one could ascertain from reading the DCI report that Deere had anything at all to do with the criminal matter and the Probation Discharge gives no indication that Deere or Deere equipment had anything to do with the circumstances surrounding the criminal matter. Deere further urges that because Denner's record was expunged, there was no way of learning such information from the case file. Deere contends that after Denner provided the Probation Discharge sheet to Mr. Wickham, they did not discuss the matter again and Denner did not discuss the matter with any other Deere representative. Deere urges that when applying for employment with Deere, Denner purposely concealed the fact that he had left a previous employer after having been put on suspension for criminal theft. Deere contends Denner admitted at his deposition that, after he left the employ of Deere, he lied to prospective employers by stating that he still worked for PMCI, the organization for which

he had worked before joining Deere. Deere maintains Denner so admitted after having initially lied under oath by stating the documents which indicated the misrepresentation that he still worked for PMCI were mistaken. According to Deere, after admitting at his deposition that he lied to subsequent prospective employers, Denner stated that he had planned to tell the employers the truth after obtaining an interview. Deere states Denner testified that he believed that, even after having to explain to prospective employers that he lied to get them to give the interview, the prospective employers would still hire him if he were otherwise qualified. Deere avers Denner stated at his deposition that he could not predict whether the fact that he would have lied to a prospective employer in order to get an interview would affect the employer's decision to hire him. Deere contends Denner has admitted he has no idea how he is calculating his damages based on lost pension benefits.

Denner avers the DCI report contains plenty of information: it reflects the disposition of the criminal matter was a deferred judgment of third-degree theft, gives the specific information regarding the date the offense was committed and the charge; and lists the case number, allowing a moderately diligent individual to investigate the matter more thoroughly, which Deere could do pursuant to Denner's release form. Denner contends he and Mr. Wickham discussed the criminal matter on more than one occasion before Denner was hired. Denner denies ever stealing or attempting to steal equipment from anyone, including Deere, or lying to Deere employees. Denner further denies having a scheme to attempt to steal Deere equipment. Denner contends Mr. Roloff's statements to him at the time he was discharged referenced the documents Denner had made available to Deere prior to his hiring so Deere did not rely solely on the security documents in deciding to terminate his employment; rather, Denner argues, Deere also relied on Denner's previous criminal matter.

III. STANDARD FOR SUMMARY JUDGMENT

Summary judgment is appropriate only when the record, viewed in the light most favorable to the nonmoving party, shows there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c); *Carter v. Ford Motor Co.,* 121 F.3d 1146, 1148 (8th Cir. 1997) (citing *Yowell v. Combs*, 89 F.3d 542, 544 (8th Cir. 1996)). An issue of material fact is genuine if it has a real basis in the record. *Hartnagel v. Norman*, 953 F.2d 394, 395 (8th Cir. 1992) (citing *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586-87 (1986)). A fact is material when it is a fact that "might affect the outcome of the suit under the governing law." *Rouse v. Benson*, 193 F.3d 936, 939 (8th Cir. 1999). In considering a motion for summary judgment, a court must view all facts in the light most favorable to the nonmoving party. *Matsushita Elec. Indus.*, 475 U.S. at 587. Further, the court must give such party the benefit of all reasonable inferences that can be drawn from the facts. *Id.*

Procedurally, the moving party bears "the initial responsibility of informing the district court of the basis for its motion and identifying those portions of the record which show lack of a genuine issue." *Hartnagel,* 953 F.2d at 394 (citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986)). Once the moving party has successfully carried its burden under Rule 56(c), the nonmoving party has an affirmative burden to go beyond the pleadings and by depositions, affidavits or otherwise, designate "specific facts showing that there is a genuine issue for trial." Fed. R. Civ. P. 56(e); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). The nonmoving party must offer proof "such that a reasonable jury could return a verdict for the nonmoving party." *Anderson*, 477 U.S. at 248.

IV. LEGAL ANALYSIS

Denner alleges in his Petition at Law Deere is liable under a theory of promissory estoppel. Specifically, Denner alleges the following: (1) Mr. Wickham, on behalf of

Deere, offered Denner a job as an electrician; (2) Deere, through Mr. Wickham, had been fully advised of Denner's prior criminal matter and made a clear and definite promise to Denner that the circumstances of the matter would not prevent his employment; (3) relying on the assurances of Mr. Wickham, Denner accepted the job offer and terminated his prior job; (4) Denner's reliance upon Mr. Wickham's statements regarding the effects of his prior criminal matter and his acceptance of Deere's job offer were reasonable; and (5) as a result of his reliance upon Deere's promises to his detriment, Denner suffered substantial economic damages.

Deere argues: (1) as a matter of law, Deere's alleged statements to Denner are not actionable under a theory of promissory estoppel; (2) Denner improperly attempts to base his claim for promissory estoppel on an implied representation, and the attempt to do so must be rejected as a matter of law; (3) the alleged promises are unenforceably vague; (4) any alleged promise for a thirty-year term of employment is barred by the statute of frauds; (5) Denner seeks contract-like benefit of the bargain or expectancy damages, which are not recoverable under a theory of promissory estoppel; (6) as a matter of law, Denner's damages are too speculative to be recoverable; (7) Denner's claim is barred by the statute of limitations; (8) Denner's claim must be rejected because he did not properly utilize and exhaust the grievance procedure available in the collective bargaining agreement; and (9) there are no genuine issues of material fact and Deere is entitled to judgment as a matter of law. Because the court finds its analysis regarding Denner's ability, as a matter of law, to establish the necessary elements of promissory estoppel dispositive of the entire case, the court does not address Deere's other arguments in favor of summary judgment.

The court's consideration of whether summary judgment is appropriate on Denner's claim for promissory estoppel begins with a review of the principles of promissory estoppel under Iowa law. *See Erie Railroad v. Tompkins*, 304 U.S. 64 (1938)

(determining federal courts whose jurisdiction is based solely on diversity must apply state, rather than federal, substantive law in order to prevent parties from forum shopping). "Promissory estoppel developed as a doctrine in the law in response to the strict traditional requirements for the formation of a contract, especially the requirement that all enforceable contracts be supported by consideration." *Kolkman v. Roth*, 656 N.W.2d 148, 152 (Iowa 2003). Promissory estoppel is based on the theory that parties should be made liable for their promises even though no consideration existed, a requirement under contract law. *Id.* (quoting *Schoff v. Combined Ins. Co. of Am.*, 604 N.W.2d 43, 48 (Iowa 1999)). Therefore, the Iowa Supreme Court has determined the effect of promissory estoppel is to "imply a contract in law based on detrimental reliance." *Id.* (citing *Schoff*, 604 N.W.2d at 48).

The elements of promissory estoppel are:

> (1) a clear and definite promise; (2) the promise was made with the promisor's clear understanding that the promisee was seeking an assurance upon which the promisee could rely and without which he would not act; (3) the promisee acted to his substantial detriment in reasonable reliance on the promise; and (4) injustice can be avoided only by enforcement of the promise.

Schoff, 604 N.W.2d at 49. The Iowa Supreme Court has held: "[T]here is nothing about the employment-at-will relationship itself that precludes reliance on a theory of promissory estoppel." *Id.* Denner has the burden of proving promissory estoppel; "strict proof of all elements is required." *Nat'l Bank of Waterloo v. Moeller*, 434 N.W.2d 887, 889 (Iowa 1989). Under Iowa law, a "'promise' is '[a] declaration . . . to do or forbear a certain specific act.'" *Schoff*, 604 N.W.2d at 50-51 (quoting *Black's Law Dictionary* 1213 (6th ed. 1990)). "A promise is 'clear' when it is easily understood and is not ambiguous." *Id.* at 51 (citing *Webster's Third New International Dictionary* ("*Webster's*") 419 (unab. ed.

1993)). "A promise is 'definite' when the assertion is explicit and without any doubt or tentativeness." *Id.* (citing *Webster's* at 592). The Iowa Supreme Court has noted "in applying this doctrine [of promissory estoppel] each case must be decided in the light of its surrounding facts and circumstances. There can be no hard and fixed rule for determining when it is appropriate." *Johnson v. Pattison*, 185 N.W.2d 790, 795 (Iowa 1971).

The facts in *Schoff* are very similar, so the court will set forth in detail the factual basis and analysis of the Iowa Supreme Court in that case. In *Schoff*, the Iowa Supreme Court, in viewing the record in the light most favorable to the plaintiff, found the following facts: Schoff was a sixteen-year employee with MidAmerican Energy Corporation. *Schoff*, 604 N.W.2d at 46. On February 28, 1996, Schoff interviewed with a district manager for Combined Insurance Company of America ("Combined"). *Id.* At the time of his interview, Schoff completed a written application for employment. The application stated that bonding was a condition of employment. *Id.* The application further requested information about Schoff's criminal history. *Id.* In response to a question asking if he had been convicted of a felony, Schoff answered, "No." *Id.* Schoff had been convicted of two serious misdemeanors, and he disclosed such fact during his interview. *Id.* The manager understood Schoff revealed this information to be sure Schoff's criminal record would not cause a problem with his potential employment by Combined. *Id.* The manager never asked Schoff whether he had ever been charged with a felony, and Schoff did not volunteer such information. *Id.* In fact, the two serious misdemeanor convictions had started as felony charges. *Id.* When Schoff asked the manager whether his criminal history would cause any problem with his potential employment by Combined, the manager assured Schoff, "as long as [you] have no felony convictions, [your] criminal record [will] be no problem." *Id.* Schoff subsequently was

offered a position with Combined. *Id.* Prior to accepting the position, Schoff specifically asked whether his criminal record would have any impact on his employment, to which the manager again responded it would not. *Id.* Schoff accepted the position and terminated his previous employment. *Id.* After accepting the position, Schoff had to apply for fidelity bond coverage. *Id.* The manager filled out the enrollment form in front of Schoff and asked Schoff specific questions as needed. *Id.* In response to the question, "Have you ever been convicted, sentenced or imprisoned?" the manager wrote "N/A" and explained to Schoff that only felony convictions were relevant. *Id.* Schoff began working for Combined as an at-will employee. *Id.* Three months after beginning the job, Schoff's application for a fidelity bond was denied. *Id.* The bonding company had denied coverage because Schoff had been charged with two felonies and had failed to disclose his prior misdemeanor convictions on his application. *Id.* Schoff's employment was subsequently terminated. *Id.* Schoff filed suit against Combined, alleging liability based on promissory estoppel. *Id.* at 47. Specifically, Schoff "claimed that Combined was 'estopped from terminating [him] as a result of the criminal charges which [he] had disclosed during his initial interview with [Combined's representative], and which [the representative] had assured [him] would not adversely affect his employment [with Combined].'" *Id.*

The Iowa Supreme Court later addressed the issue of whether Schoff had proven Combined made a promise to him. *Id.* at 51. The Iowa Supreme Court decided:

> Initially, we conclude that any statements made by [the manager] that only felony convictions were important do not constitute an assertion that Combined would forbear a certain specific act, namely, discharging Schoff because of his felony charges and/or his failure to be bonded. These statements by [the manager] more clearly fall within the common definition of a representation: "a statement . . . made to convey a particular view or impression of something with the intention of influencing opinion or action." [*Webster's*] at 1926.

> Statements that only felony convictions are relevant to employment and bonding decisions are not the equivalent of a declaration that Combined would not fire Schoff because of his felony record. [The manager's] statements merely conveyed his *impression* or *understanding* of a certain fact – that only felony convictions were relevant; as a matter of law, these statements do not constitute a promise. *See generally Merrifield v. Troutner*, 269 N.W.2d 136, 137 (Iowa 1978) (distinguishing promissory estoppel, which requires a promise, from equitable estoppel, which is based on a misstatement of fact); 28 Am.Jur.2d *Estoppel and Waiver* § 48, at 658 (1966) ("In order for the doctrine of promissory estoppel to come into effect there must, of course, be a *promise* on which reliance may be based…." (Emphasis added.)).
>
> Although this distinction may appear to be a technical one, it is of utmost importance. If we do not make a firm and clear distinction between a promise and a representation, discharged employees could simply characterize negligent misrepresentations as promises and thereby avoid our rule that employees may not recover for negligent misrepresentations made by an employer or potential employer. Consequently, we will not imply a promise from representations made by an employer, but will require strict proof that the defendant promised to do or not to do a specific act, and did not simply state the employer's view or impression of something.
>
> That brings us to the other statement made by [the manager] – that Schoff's criminal record would not be a problem. Although we have serious reservations whether this statement constitutes a promise, we need not resolve that issue because any such "promise" was not clear and definite, as we now discuss.

Id. The Iowa Supreme Court further ruled:

> [A]ny statement that Schoff's "criminal record" would not affect his employment is subject to some ambiguity in that the parties did not have the same knowledge with respect to the nature and extent of Schoff's criminal record. This ambiguity

> is crucial because Schoff was not fired because of his criminal record in general; he was fired because he could not be bonded. Similarly, he was not denied a bond due to his criminal record in general; rather he was not bonded because he had been charged with felonies and/or had not revealed his criminal record on his bond application. As a matter of law, any "promises" that Schoff's criminal record would not be a problem simply do not clearly and definitely encompass a promise that Schoff's felony charge would not be a problem or that his failure to be bonded would not be a problem. *See Neely v. American Family Mut. Ins. Co.*, 930 F.Supp. 360, 373-75 (N.D.Iowa 1996) (holding, as a matter of law, that assurance by insurance agent that "everything would be covered" was not sufficiently clear and definite to constitute a promise by insurer that coverage would be provided for executive officers, directors and employees of insured); *Wing v. Anchor Media, Ltd.*, 59 Ohio St.3d 108, 570 N.E.2d 1095, 1098-99 (1991) (holding that promise that employee would have an opportunity to purchase an equity interest in employer was not a promise of continued employment). Therefore, the statement upon which the plaintiff bases his claim does not meet the strict standard required for a clear and definite promise.

Id. at 51-52. The Iowa Supreme Court determined summary judgment in favor of the defendant was warranted. *Id.*

The court finds *Schoff* to be on point. Although Denner argues *Schoff* is factually distinguishable because Deere did not require some third-party approval of Denner's employment, the court finds the Iowa Supreme Court's analysis applicable to this case. Here, Denner contends the "clear and definite promise" was Mr. Wickham's statement that Denner "passed all my tests, everything is clear" in response to Denner's statements, "If you don't have a problem hiring me, I will take the job and tell PMCI that I'm going to work for you," and "If everything [is] in the clear [and] there [are] no problems between

us, I [will] take the job." The court finds such response does not constitute a clear and definite promise in light of *Schoff*. First, the court finds the statement constitutes a representation, that is, Mr. Wickham's impression or understanding that Denner was hireable; such statement is not a promise to forbear discharging Denner because of the underlying facts of the expunged conviction or other evidence Deere may have possessed regarding Denner's history. Second, even if "[you] passed all my tests, everything is clear" was a promise, the court finds such promise was not clear and definite. The statement is ambiguous. Mr. Wickham had referenced the tests Denner had to take to apply for the position in the previous phrase. There is no evidence in the record to show Mr. Wickham knew he and Denner were discussing Denner's criminal record, specifically the second-degree theft charge and deferred judgment for third-degree theft, when Mr. Wickham made the statement. Assuming Mr. Wickham and Denner were both absolutely clear they were discussing Denner's criminal record, as opposed to any other job application procedures Denner had to undertake to get to that point in the job application process, the court finds any statement that Denner's criminal history – particularly the charge of second-degree theft and the deferred judgment for third-degree theft – would not affect his employment is subject to ambiguity because the parties did not have the same knowledge regarding the nature of the facts underlying such charge and disposition. *See id.* at 51. Even viewing the facts in the light most favorable to Denner, the court finds Denner was not fired solely on the basis of his deferred judgment for third-degree theft. Rather, Denner alleges Mr. Roloff told him at the time he was fired, "You were the young man we pressed charges against several years ago." The court finds this statement indicates Denner was fired because of the facts underlying the previous charge, not the fact Denner had the previous deferred judgment. As a matter of law, therefore, any "promise" that Denner "passed all my tests, everything was clear" does not clearly and definitely

encompass a promise that the facts underlying Denner's charge, i.e., the fact Denner stole Deere equipment, and other information Deere may have possessed regarding Denner's history would not be a problem.

Furthermore, the statement Denner had "passed all my tests, everything was clear" is not easily understood and unambiguous in its meaning that no facts underlying the previous criminal matter would interfere with Denner's employment with Deere; neither is such statement explicit and without any doubt or tentativeness. *See id.* (defining "clear" and "definite").

The court finds summary judgment is appropriate. Denner has failed to establish the first element of promissory estoppel: a clear and definite promise. The court finds Mr. Wickham's statement was a representation, not a promise, and such statement was neither clear nor definite. Therefore, Denner cannot satisfy each element of promissory estoppel by strict proof. *See Nat'l Bank of Waterloo*, 434 N.W.2d at 889. Deere has demonstrated there is no genuine issue for trial, which Denner has failed to rebut. Therefore, as a matter of law, Deere is not subject to liability to Denner on the theory of promissory estoppel.

V. CONCLUSION

For the foregoing reasons, **IT IS HEREBY ORDERED**:

(1) Defendant Deere & Company's Motion for Summary Judgment (docket no. 12) is **GRANTED**.

(2) Plaintiff's Petition is **DISMISSED** with prejudice.

(3) All court costs are assessed against Plaintiff.

SO ORDERED.

DATED this 7th day of January, 2005.

LINDA R. READE
JUDGE, U. S. DISTRICT COURT
NORTHERN DISTRICT OF IOWA